REMARKS

Claims 1-20 were presented for examination. Claims 1-20 were rejected.

Claims 5, 11, 12 and 18 were objected to because of informalities. More particularly, claim 5 was objected to under 37 CFR 1.75 as being a substantial duplicate of claim 2. In response, Applicant traverses the Office's suggestions ,claim 5 dealing with periodic payments in addition to claim 2 dealing with collateral. In claim 11, the Office suggested that Applicant retain the "further comprising the step" form for clarity. In response, Applicant has amended claim 11. In claim 12, the Office suggested that Applicant state "said principal loan amount" for consistency and clarity. In response, claim 12 has been amended. Claim 18 was objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. In response, claim 18 is different in scope from claim 1, claim 1 having step (d) whereas claim 18 indicates a loan for principal and investment that does not show relationship to the value of the real estate and the investment. Therefore, claims 5, 11, 12 and 18 should be in allowable form.

Claims 1-3, 7, 8, 13, 17, 18 and 20 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In response, the claims have been amended to correct the issues raised by the Office.

Further, regarding claim 1, "said seller" refers to the party that owns and is offering for sale "said real estate". "Purchasing" relates to the purchase, by the borrower, of one or more investments vehicles with excess loan proceeds provided by the lender to said borrower. While the purchase may involve "additional investment vehicles", such investment vehicles are in fact "products", which collectively represent the "investment vehicle" component of the product. The funds to purchase said vehicle(s) are provided by the lender in the form of a loan funding either 1) in excess of the

purchase price, or 2) in excess of the required loan amount, defined as the purchase price less any down payment made by, or to the benefit of, the borrower. Such excess funds are specifically allocated to the purchase of one or more investment products that collective comprise an "investment vehicle". While additional investment vehicles may be acquired by the borrower, they are purely at the borrowers' discretion. Any and all investment products that comprise the "investment vehicle(s)" that are a part of the loan product are funded by the excess loan provided by the lender and received by the borrower, and are specifically allotted and allocated for that purpose.

For the purposes of claim 2 and 3, "held" refers to the "holding" of such investment vehicle as defined in Claim 1, by the lender or party extending the loan to the borrower for the purpose of purchasing said real estate and investment vehicles. "Holding" means the commitment of such investment vehicles as collateral against potential default by the borrower. While the borrower is officially the "owner" of said investment vehicle and real estate upon the execution of the transaction, the lender is deemed to be "holding" collateral for both assets acquired by the borrower in the transaction: the Real Estate, and the Investment Vehicle. "Holding" shall not always be defined as the physical possession of these collaterals, but of the right granted to the lenders when such assets are pledged as collateral for the loan. Here ownership of these assets are distinguished from the collateralization of these assets, wherein the lender "holds" a legal claim on the assets by virtue of the pledging of these assets by the borrower as collateral against the loan, including the "excess loan" amount used to purchase the investment product(s) that collectively make up the investment vehicle.

Claim 7 refers specifically to the implementation of a "loan repayment plan". Therefore, paragraph C of Claim 7 refers to the "repayment term" of the loan referred to in the subject of Claim 7. Since the underlying product for which the patent application is submitted is a loan product, or

"Mortgage Financing System", ALL mortgage loans include repayment terms, whether they are closed-end (installment loans) or open-end (revolving loans). There is only ONE loan made to the borrower, and it is composed of two amounts, as described in Claim 1 above: the amount required to purchase the property, and the "excess amount" allocated to the purchase of the investment vehicle that is held as additional collateral against the loan. The two components are aggregated into a single loan, which is then amortized based on "repayment terms" applicable to the loan product chosen by the borrower.

Steps (a) through (h) represent a flow chart for the extension of the loan product, and the party performing each is neither germane, nor definitive. It is expected that steps (a) through (f) will be taken by the lender on behalf, or to the benefit of, the borrower. In exchange for the making of such loan, borrower agrees to make periodic payments as defined by the "repayment terms" established in 7(c), which shall include payments toward principal reduction and monthly interest on the loan, paid in arrears. In addition to paying interest on the loan, borrower shall also have the right to receive interest on the investment vehicle purchased as part of the loan process, as identified in 7(f). Steps (g) and (h) are therefore steps in the overall process of making and repaying the loan, and they are the responsibility and right of the borrower, respectively.

Regarding claim 8, the description refers to an "additional loan amount", not an "additional loan". As described above, there is a base loan with an amount 1) allocated to the purchase of "said real estate", and 2) an additional amount allocated to the purchase of "said investment vehicle". "Additional loan amount(s)" are part of "the loan", they are not "additional loan(s)".

Regarding claim 13 and as addressed in the discussion of Claims 7 and 8 above, "providing said loan amount" refers to the extension of a single loan, sufficient to 1) purchase said real estate, and 2) to provide "additional" or "excess" funds to purchase an investment vehicle, composed of one

or more investment products. The sum of these two components represent a SINGLE loan, and are the principal amount of the loan made to the "borrower" by the lender. No loan is made to the seller of the property, though the seller will receive proceeds from the loan in the amount required to purchase said real estate. The seller cannot be referred to as a party to the loan, which includes relating the term "principal" to the seller, as "principal" refers to the face amount of the loan, not to the purchase price of said real estate. Seller is simply a recipient of a portion of the proceeds of the principal loan made to the borrower.

Regarding claim 12, the "principal" may be either the ENTIRE loan amount, or as amended is composed of two components, 1) the amount required to purchase "said real estate", hereafter the "base amount" and 2) an "excess" amount ranging up to 20% of the "base" amount. These two components may comprise the "principal amount" of the loan, which is a defined legal term that refers to the face amount of the loan. Thus, the "excess" amount is not 20% of the principal, but "up to 20% of the base" amount. So, the "principal amount" is defined as the "base amount" plus a fraction of the base amount which can range from 0 – 20% of the base amount. In mathematical terms, PRINCIPAL = BASE + (EXCESS PERCENTAGE x BASE). If the excess loan amount is maximized at 20%, and the BASE amount is maximized at 100% of said real estates' purchase price, and assuming that the purchase price is $200,000, the principal, using the above formula, would be [PRINCIPAL = $200,000 + (.2 x $200,000)] = $200,000 + ($40,000) = $240,000]. Thus the "excess" amount will be a maximum of $40,000/$240,000 = 16.7% of the principal loan amount.

Regarding claim 18, the term "substantially" refers to the collective steps outlined in Claim 7. These are the "MAJOR" steps, and the description is defined as "Substantially" because it is neither practical nor critical to the patent application to define every single step involved in the process of 1) applying for and receiving a mortgage loan, and 2) investing in an investment vehicle.

"Substantially" may thus also be a reference to the steps as the core steps taken in this process, rather than every single step. These "core" steps are intended to highlight the major components of the process, and the steps that are unique to this loan process.

The "investment vehicle" referred to in claim 20 has two components (or products) associated with it, an annuity and an insurance policy. While an annuity involves a simple purchase, the insurance policy involves the application for the policy, and the potential for rejections. The approval of an insurance policy is thus a critical component of the loan program, as the policy is part of the "investment vehicle" and a critical component of the collateral (security) securing the principal loan amount.

Therefore, claims 1-3, 7, 8, 13, 17, 18 and 20 should be in allowable form.

Claims 1-20 were provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of Claim 1-21 of co-pending Application No. 10/561,661 ('661). The Office further stated this was a provisional double patenting rejection since the conflicting claims have not been patented. In response, Applicant will file a Terminal Disclaimer if the claims are allowable except for this double patenting rejection. Therefore, claims 1-20 may be made in allowable form.

Claims 1-13 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,819,230 to Christie *et al.* In response, the Christie patent involves the creation of two types of accounts, one type with the bank or depository institution, and one with an insurance company. These accounts are "holding" accounts. That is, they are created as a temporary account to hold funds designated for the 7-pay life insurance policy. An amount representing the total premium for a 7-Pay Life Insurance Policy is collected from the borrower, in an amount over and above the loan amount. Following are the distinctions between the programs.

In the Christie patented program, a borrower receives a maximum loan in an amount less than, or equal to, the purchase price. The "originator handles the applicant as standard home mortgage applicant". The borrower is required to contribute 20% of the funds to the purchase of the property, in the form of a down-payment, plus all closing costs. That down-payment is then used to purchase a 7-Pay Life Insurance policy. The maximum loan amount loan amount is thus 100% of the property purchase price. The insurance policy and loan are two distinct and independent products, and neither the loan product nor the insurance product is unique. The Christie loan is simply the use of an insurance policy, with ANY insurance carrier, as collateral for a loan, allowing the borrower to leverage interest rates and tax law. The insurance policy is not connected to, or even required by the loan. Even without the insurance policy, the loan will be made if the borrower meets the credit standards.

In the loan as claimed in the above-referenced application, the "loan" is defined as two parts, the mortgage and the insurance policy. The borrower may receive a loan amount up to 20% above the property purchase price, or 120% of the purchase price. No down-payment need be required, unless dictated by the individual borrower's credit history. The borrower MAY make a down-payment of ANY amount, but the total loan amount is independent of the down payment amount. For example, a borrower may choose to put no money down and receive a loan equal to 120% of the property purchase price. The insurance policy is a required component of the claimed loan, regardless of any down-payment amount.

Second, the Christie program takes the down-payment amount and forwards 4/7th of the amount to a third-party "program coordinator". 1/7th is used immediately for the initial payment on the 7-Pay Insurance policy, and the remaining 3/7^{ths} of the 4/7^{ths} held by the program coordinator is deposited with the insurance company in a premium deposit account, which is simply a form of

escrow. The remaining 3/7ths of the down payment amount is used by the lender or depository institution to purchase a 4, a 5 and a 6 year Certificate of Deposit. Each CD will mature based on their term and be used to pay the premium of the 7-Pay Life Insurance policy in years 4, 5 and 6 (or specifically for payments 5, 6 and 7 – since payment 1 is made immediately).

In the claimed loan, all of the 20% "excess" is used to fund an investment vehicle made up of two investment products – an annuity and a 7-Pay Universal Life insurance policy, for example. Of the excess loan amount, 6/7th of the excess is deposited in an annuity product with the insurance company, and the remaining 1/7th is used to make the initial payment on the 7-Pay Life Insurance policy, for example, with the same insurance company. The 7-Pay Life Insurance product itself is not unique in either the claimed loan or Christie Loan program, but is a common insurance product.

Third, the claimed Loan has no third-party coordinator. It uses an annuity and Insurance policy, both managed by a single insurance company. Instead of holding payments in limbo in either a premium deposit account or a CD (which generates taxable interest), the claimed loan uses a tax-free annuity to hold the funds over a 6 year period, applying a payment from the annuity account to the insurance policy each year, automatically. No third party is involved, and no transfer or movement of physical funds is required the insurance company simply transfers the funds, as necessary, from one account to the other. The lender is also not involved in managing the insurance account or the payments for the insurance policy once the loan is funded.

Fourth, the Christie loan requires a down-payment, though the down-payment is held as collateral in an insurance policy and CD. This limits the universe of borrowers to those able to make a down-payment, which in the current credit climate, will amount to at least 10%. However, 10% would be insufficient to fund a 7-Pay life insurance policy in an amount equal to, or greater than, the loan. In fact, the loan amount is not a determining factor in the Christie loan, whereas in the claimed

loan, the program is constructed so that the insurance policy is written in an amount equal to the principal loan amount, and with sufficient premium paid from the "excess" to ensure that the policy reaches face value maturity with no additional required premium payments.

Fifth, the claimed loan is tightly integrated with the Insurance carrier. Whereas the Christie loan can use ANY insurance company because the loan and insurance programs are independent and the insurance plan is managed by an undefined third-party "program coordinator", the claimed loan is a single program with two parts, and the two parts are tightly integrated, and thus only select insurance company partners participate in the program, and the borrower is not free to select ANY insurance carrier. In the Christie loan, the lender and insurance company are completely unrelated and the only formal connection is the assignment of the policy as collateral to the lender. Once the loan amount reaches 80% of the home value, the lenders' claim (security) on the insurance policy collateral is released, and the borrower can lapse the policy, withdraw the cash value, or maintain the policy. The Christie loan is intended to provide a temporary leverage of interest rate and assets, using prevailing tax laws. The claimed loan conversely, is intended to provide a short-term financial reserve (or emergency fund) as well as a long term retirement account. The claimed loan does not allow for the termination of the insurance policy unless the loan is paid in full, either as a result of the sale or the refinance of said real estate. The claimed loan insurance policy is also portable, and can be moved to another property.

Sixth, the insurance policy, premium account and CDs loosely associated with the Christie loan serves purely as collateral for the loan. They are not liquid and are not useable until released as collateral by the lender when the loan to value (LTV) ratio reaches 75% (that is, when the outstanding principal represents an amount no greater than 75% of the then current market value).

The claimed loan insurance policy cash value is intended to serve not only as collateral, but

as a financial safety net. The policy is constructed such that the cash value is sufficient to act as a financial reserve to make all of part of the loan payment for a period of time, should the borrower meet with an untimely financial crises – such as the loss of income, disability, a dramatic increase in the interest rate and thus the monthly payment, etc. The borrower may use the cash value to subsidize up to 80% of the monthly payment. At a maximum of 80%, the policy can be used to subsidize the monthly mortgage payment for at least 2 years, without allowing the cash value to decline to the point that additional premiums will be required sometime in the future to keep the policy in force. The Christie program offers no such option, and in fact, the cash value is untouchable. The claimed loan borrower may also skip as many as two payments each year, beginning in the second year.

Because of the tight integration between the lender and insurance carrier, when the borrower needs to gain access to the cash value as a result of one of the allowable uses, the borrower need only contact the lender and file a request along with an explanation of the reason for the request. This also gives the lender early warning that the borrower may enter financial distress so that the lender can better manage the risk. When the subsidy from cash value is approved by the lender, the lender can automatically withdraw the subsidy amount from the policy each month, for the period approved. Even if the Christie program offered this subsidy option, the lender and insurance carrier are not connected and no facility or rights exist to allow the lender to withdraw such amounts.

Seventh, the payment of the first premium on the insurance policy of the Christie program must be made BEFORE the loan closes if they want to use the Down-payment to fund a portion of the policy and use it as collateral. The insurance policy must be approved and the initial premium paid before the loan is funded.

The claimed loan uses the proceeds of the loan to fund the insurance policy simultaneously with the funding of the loan.

Eighth, the Christie program requires third-party mortgage insurance on the entire loan, so that the lender's loss exposure is at or below 75% of the loan amount, when factoring in the loan, the cash value and the mortgage insurance. The claimed loan requires no such mortgage insurance, but adds an additional yield premium to the interest rate to compensate the investor for the additional risk of a high-LTV loan. The claimed loan is intended to provide families with good credit, but limited liquidity, to purchase a home, a retirement plan, and an emergency fund, in a single bundled product.

The Christie program and all other predecessors of the claimed loan allow for a maximum 100% Combined LTV (that is, the maximum loan is equal to the real estate purchase price, and no more). The maximum "effective LTV" is only 80%. The net of the mortgage loan, the insurance cash value and the mortgage insurance cannot exceed 80%. In effect, the Christie program is a traditional 80% mortgage loan, except that the 20% down payment is held by an insurance company and pledged as collateral to the lender. The borrower still makes a 20% down payment. A borrower can easily replicate this program without the assistance of the Christie program by taking out a 100% loan to value loan on a property and pledging ANY acceptable asset to the bank as collateral – the program simply defines that asset as an insurance policy. The lender must be willing to accept a cross collateralized asset, whether it is a brokerage account offered as collateral by the borrower, or the insurance policy coordinated by the Christie program. The Christie borrower can use ANY insurance company and any lender willing to cross collateralize assets.

The claimed loan can be used with ANY or WITH ZERO down-payment, and can be funded in an amount up to, and including, 120% of the real estate purchase price. The MANA loan can also

be used in commercial lending transactions to allow a small to mid-size company to fund a pension, 401K plan, etc. Only specific lenders, originators and insurance companies participate in the program because of the level of interaction and technology integration. The borrower MUST accept the insurance policy as defined and required by the claimed loan program.

The technology required by the claimed loan includes a real-time interface between the originator, the lender, the insurance carrier, and the investor. The lender will have a formal automated process for accessing cash value from the borrower's insurance policy cash value when requested by the borrower and approved by the lender, or in the case of a borrower's delinquency or default, beyond the allowable skipped payments. No third party coordinator or administrator is involved, and the borrower receives the loan and insurance policy as a package, where both the lender and insurance carrier are participants in the claimed loan program, and have agreed to the claimed loan program terms and conditions, accepted the claimed loan collateral documents, and adopted the claimed loan technology for the administration and monitoring of the various elements of the claimed loan by all of the institutions involved in the program.

While the Christie program describes itself as a "computer and communications system that manages a mortgage and life insurance combination program", this description is inaccurate. The Christie technology does not "manage" the program; it tracks the elements of the combined program, and "manages" the traditional loan process. The lender and insurer are independent and unrelated. They have no technology interface, contractual relationship or co-dependence requirement. They are simple "coordinated" by a third party coordinator who must track and initiate each piece of the process. Therefore, claims 1-13 and 15-18 should be in allowable form.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,819,230 to Christie *et al.* in view of U.S. Patent No. 5,673,402 to Ryan *et al.* In response, Christie

has been distinguished as set out above and thus it in combination with Ryan will not invalidate claim 14. Therefore, claim 14 should be in allowable form.

Claims 19 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,819,230 to Christie *et al.* in view of U.S. Publication No. 2002/0087365 to Kavanaugh. In response, Christie has been distinguished as set out above and thus it in combination with Kavanaugh will not invalidate claim 14. Further, the "investment vehicle" referred to in claim 20 may be deemed to have two components (or products) associated with it, an annuity and an insurance policy. While an annuity involves a simple purchase, the insurance policy involves the application for the policy, and the potential for rejections. The approval of an insurance policy is thus a critical component of the loan program, as the policy is part of the "investment vehicle" and a critical component of the collateral (security) securing the principal loan amount. Therefore, claims 19 and 20 should be in allowable form.

In commenting on the references and in order to facilitate a better understanding of the differences that are expressed in the claims, certain details of distinction between same and the present invention have been mentioned, even though such differences do not appear in all of the claims. It is not intended by mentioning any such unclaimed distinctions to create any implied limitations in the claims. Not all of the distinctions between the prior art and applicant's present invention have been made by applicant. For the foregoing reasons, applicant reserves the right to submit additional evidence showing the distinction between applicant's invention to be unobvious in view of the prior art.

The foregoing remarks are intended to assist the Office in examining the application and in the course of explanation may employ shortened or more specific or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims; the actual claim language should be considered in each case. Furthermore, the remarks are not to be considered to be exhaustive of the facets of the invention which are rendered patentable, being only examples of certain advantageous features and differences which applicant's attorney chooses to mention at this time.

The Office is authorized to charge any fees due in association with this filing to the Deposit Account of Adams and Reese, LLP, Account No. 50-2413. Further, the Office is authorized to charge any other fees or credit any overpayment for this matter to the Deposit Account of Adams and Reese, LLP, Account No. 50-2413.

Reconsideration of the application as amended and allowance thereof is requested.

Please send all future correspondence regarding the above-referenced application to the undersigned at the address appearing below.

Respectfully submitted,

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